Commercial Honing of Detroit, Ltd. *and* **International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)** *and* **William Williams, et al.** Cases 7-CA-20037, 7-CA-20381, and 7-RC-16566

25 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 6 May 1983 Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

AMENDED REMEDY

We adopt the judge's remedy except the requirement that the Respondent discharge, if necessary to facilitate the reinstatement or recall of the discriminatees, production employees who were not hired in chronological order based on their seniority. The record does not establish that the Respondent utilizes a seniority system in making employment-related decisions. Therefore, we shall require instead that the Respondent offer Jackie Burton, Michael Burton, Leroy Burton, Harry Brown, Zef Camaj, Mario DiCiesare, and William Williams immediate and full reinstatement or recall, as appropriate, to the positions in which they would have been working at the Warren, Michigan facility, absent the discrimination against them or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to any rights or privileges previously enjoyed, discharging, if necessary, any persons hired to replace these employees as a result of the discrimination.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Commercial Honing of Detroit, Ltd., Warren, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer Jackie Burton, Michael Burton, Leroy Burton, Harry Brown, Zef Camaj, Mario DiCiesare, and William Williams immediate and full reinstatement or recall, as appropriate, and make them whole for losses they incurred as a result of the discrimination against them in the manner set forth in the remedy section of this Decision."

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly.

"(c) Remove from its files any reference to the delayed recall of Leroy Burton and Harry Brown and the failure to recall Mario DiCiesare and William Williams, and notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel actions against them."

3. Substitute the attached notice for that of the administrative law judge.

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[1] The Respondent has excepted to some of the judge's credibility findings, contending, inter alia, that in crediting employee Mario DiCiesare's testimony the judge disregarded critical evidence concerning DiCiesare's character. The judge extensively discussed the issue of DiCiesare's credibility. There is no basis for concluding that in finding DiCiesare's testimony credible the judge failed to consider all the evidence relevant to this issue. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing any of his findings.

In sec. IV,C of his decision, the judge found that the Respondent violated Sec. 8(a)(1) by promising benefits to employees during the Union's organizing campaign to discourage them from supporting the Union. In so finding, however, the judge not only discussed the subject of promising benefits, he discussed the granting of benefits as well. As the latter part of his discussion concerning the granting of benefits is inapposite in this context, we do not rely on it in adopting the judge's finding that the Respondent promised benefits in violation of Sec. 8(a)(1).

In sec. IV,C of his decision, the judge also found that the Respondent's owner and president William Yates and employee James Beck unlawfully threatened employees with plant closure. Although James Beck is an employee, the judge found the confidential relationship between Beck and Yates a sufficient basis for holding the Respondent responsible for Beck's statements. We agree with the judge that the Respondent, through Yates, threatened employees with plant closure in violation of Sec. 8(a)(1). We find it unnecessary, however, to reach the issue whether Beck's similar threat to close the plant also violated Sec. 8(a)(1). Such a finding would only be cumulative, with no effect on the Order.

[2] In sec. IV, par. 7, of his decision, the judge found that the General Counsel met his initial burden of demonstrating that the union activities of employees Jackie Burton and Zef Camaj were a motivating factor in the Respondent's decision to discharge them. In sec. IV,B, he stated that the Respondent may have partly relied on certain lawful considerations for its actions, but ultimately concluded that the preponderance of the record evidence established that the Respondent's real reason was discriminatory. Although we agree with the judge's conclusion that the Respondent discriminatorily discharged Jackie Burton and Zef Camaj, we find that his analysis, while essentially correct, does not comport in all respects with the requirements of *Wright Line*, 251 NLRB 1083 (1980). Thus, in adopting his conclusion, we find that the General Counsel made a sufficient prima facie showing that the discharges were unlawful and, further, that the Respondent failed to demonstrate that it would have taken the same action even if it had not suspected Burton and Camaj of engaging in union organizing activities. See *Wright Line*, supra.

[3] We will modify the judge's recommended Order to conform to our amended remedy and to include the appropriate expunction provisions.

IT IS FURTHER ORDERED that the Regional Director for Region 7 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Order, open and count the ballots of Jackie Burton and Zef Camaj and prepare and cause to be served on the parties a revised tally of ballots on the basis of which he shall issue an appropriate certification.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge, refuse to recall, or otherwise discriminate against employees in retaliation for engaging in suspected union activities or other protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act by interrogating employees concerning their union activities and those of other employees; creating the impression that employees' union activities are under surveillance; promising benefits; threatening plant closure, discharge, and loss of benefits to discourage membership in a labor organization or other protected concerted activities; and failing to offer recall to employees in retaliation for engaging in suspected union activities or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Jackie Burton, Michael Burton, Leroy Burton, Harry Brown, Zef Camaj, Mario DiCiesare, and William Williams immediate and full reinstatement or recall, as appropriate, to the positions in which they would have been working absent our discrimination against them or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to any rights or privileges they previously enjoyed, discharging, if necessary, any persons hired to replace these employees as a result of such discrimination. WE WILL also make them whole, with interest, for any loss of pay suffered by them as a result of the discrimination practiced against them.

WE WILL remove from our files any reference to the discharge of Jackie Burton and Zef Camaj on 29 October 1981, the discharge of Michael Burton on 5 November 1981, the delay in recalling Leroy Burton and Harry Brown, and the failure to recall Mario DiCiesare and William Williams, and WE WILL notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel actions against them.

COMMERCIAL HONING OF DETROIT, LTD.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. These consolidated cases were heard in Detroit, Michigan, on October 13, 14, and 15, 1982. The proceedings are based on charges filed November 18, 1981, and March 3, 1982, and the reopening on October 12, 1982, of the related representation case, Case 7-RC-16566. The General Counsel's complaints, as amended, allege that Respondent Commercial Honing of Detroit, Ltd. violated Section 8(a)(1) and (3) of the National Labor Relations Act by discharging certain employees because of their suspected union activities and by interrogating employees; threatening them with loss of benefits, jobs, and plant closure; promising them benefits; creating an impression of surveillance; and otherwise interfering with, restraining, and coercing employees in the exercise of their rights under Section 7 of the Act.

Briefs were filed by the General Counsel and the Respondent. On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is engaged in the honing of metal tubing and related services. It maintained a facility at Roseville, Michigan, until January 1982 when it was relocated at Warren, Michigan, and at all times material herein it derived gross revenues in excess of $500,000 and performed services at these facilities valued in excess of $50,000 for customers outside Michigan. It admits that it is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the Union, is a labor organiation within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On May 1, 1981, William Yates became the owner and president of Commercial Honing of Detroit, Ltd. and Commercial Honing of Jackson. At the same time, he also acquired 95 percent interest in Commercial Honing of Texas. All three plants are primarily engaged in the

"honing" or precision grinding of the inside diameters of pipe.

Yates also is the owner of Yates Industries, a business which requires honing services. Prior to May 1981, Commercial Honing of Detroit had performed all of its work. At the time of purchase, the Jackson plant had approximately 60 employees, Texas 17, and Detroit 12. Employees of the Jackson plant are represented by a union other than the Charging Party herein. Prior to the purchase, Yates was aware that the Jackson and Texas plants were doing well and that the Detroit operation had lost money for 3 or 4 years. After the purchase Yates and Henry Yoe, who is a vice president of the Respondent and Yates Industries, began observing the operations of the several plants, with Yoe spending most of his time in Texas. During July and August he became aware of specific problems at the Roseville plant which centered around poor employee work habits, including irregular work hours and inattention to machines. Yoe subsequently wrote up a company policy that basically requires the employees to stay by their machines. In addition to several honing machine operators, who require special skills, the Roseville plant employed Mark Cook as materials manager for the handling of paperwork and phone calls and the scheduling of orders. Cook was an hourly paid employee who generally wore casual clothing at work. Although he was not assigned to any supervisory duties, he would give work orders to Leroy Burton, the senior machine operator, and he assigned the jobs to specific machines or workers. He also was asked by Yoe about the work habits of other employees and for his advice about which employees should be disciplined or discharged. James Beck was employed as a salaried truckdriver and sales representative. He had no specific supervisory duties in connection with the production workers, although he also sometimes assigned jobs to production employees. When Yates purchased the Respondent Company, he discharged the former manager, and, in substance, the Roseville facility operated without any foreman or supervisor after it was purchased on May 1, 1981, except for occasional observations by Yoe, when he was not in Texas, or Yates, when he was in the Roseville production area.

Although Yoe became aware of productivity problems by being "told about them" or stopping in on "occasion," he did not post his policies about staying by machines until at least October 25, 1981. No other attempts were made to take any specific disciplinary or corrective action. During the summer of 1981, Yates became involved in negotiating the purchase of the Roseville building (its lease was due to expire at the end of the year). In anticipation of the purchase, he painted, installed new lights, and built a glass walled office that would allow observation of the production area. Yates, who had no prior knowledge of the honing process, testified that he "really couldn't figure it out," referring to apparent problems with productivity and quality of workmanship at Roseville. Yates had visited the Texas plant and he visited the Jackson plant at least once a week. Otherwise, he testified that he was at the Roseville plant everyday (sometimes on Saturdays), and that he supervised the production workers until November 5, 1981, when Foreman Ed Moore was brought there from the Jackson facility.

Sometime during July 1981, some employees became concerned about the way things were going and Leroy Burton contacted the Union. He was sent union cards which he and employee Zef Camaj handed out to other employees during late July.

The employees then decided to wait and see what would happen as they received the impression that Yates was going to be fair and perhaps give some added benefits; however, shortly before October 29, 1981, Burton again contacted the Union and a representation petition was filed on that date.

Yates testified that on October 27 or 28, 1981, he had pretty much made up his mind to lay off employees Leroy Burton, Jackie Burton (Leroy's son), and Zef Camaj because he had gone through records and found that they were frequently tardy or absent and also had produced excessive scrap. He then told his brother, John Yates, to inform them of this on Thursday, October 29. On Thursday morning, Bill Yates spoke to Jackie Burton about staying by his machine and he then asked Jackie's father, Leroy, to warn Jackie that he would be fired if he did not do so.

Between 1 and 2 p.m., on October 29, 1981, Yates called employee Mario DiCiesare away from his machine. DiCiesare testified that as they walked outside the plant Yates started the conversation by telling him that he knew who had started the union drive and that he was letting Leroy and Jack Burton and Camaj go because they "weren't working properly" and "weren't making money for the Company." Yates asked DiCiesare if he would agree to open the plant each morning (apparently in place of Leroy Burton) and when he said yes he was instructed to return that evening to pick up the key and not to tell anyone about the conversation.

Yates' brother terminated the three employees about 2:30 p.m. on the same day; however, Leroy Burton returned a few hours later. He asked Yates why he was being let go after 29 years and Yates agreed to give him another chance.

Although Yates agreed that he had a general conversation with DiCiesare on the afternoon of October 29, he denied that any mention was made of the Union then or later that evening when DiCiesare picked up the key. DiCiesare testified, however, that when he returned to the shop, at approximately 6 p.m., he met with Yates and Jim Beck in the back office along with employees Art Oswald and Pero Grozdrovski. DiCiesare further testified that Yates told them that "he did not need the people who started the Union in the shop and that he would retain the employees who had no connection to the Union." Yates also said he would give them a raise at the end of the month if "things went smooth."

Yates, however, testified that he did not learn of the employees' union activities until November 3 when he returned a call received in the Respondent's office on November 2 by his secretary from the Regional Office of the Board. He also testified that on November 3 he saw an envelope from the Board and an election notice but that he otherwise never read the material in the envelope

or any other material that came from the Board. The General Counsel presented an exhibit that indicated certified receipt of notification from the Board of the filing of the representation petition, signed by Donna Burnes, Yates' secretary, on October 30, 1981.

Harry Brown was employed by the Respondent as a machine operator. He was on sick leave during October 1981 but visited the plant on October 29 in order to bring in papers related to his hospitalization and he was present when Yates' brother laid off the three employees. The next day, October 30, 1981, he received a call at his home from Yates. He testified that Yates asked, "What the hell do you want a union for?" Brown responded that the employees wanted a union for "protection." Yates asked "protection from what." Brown explained "from the shit you pulled last night," referring to the termination of Burton and Camaj. Yates informed Brown that Jack Burton and Camaj would never work for him again, complaining about their work habits. Yates then said that he "would close the shop before he would let the Union in."

Leroy Burton testified that during the first week of November 1981 Yates informed him that some employees were trying to start a union at the shop. Burton responded, "Oh yeah," and Yates said, "Yeah." On either November 1 or 2, 1981, Jim Beck spoke to Burton outside the shop door and said that if they found out who was trying to start a union "his ass would be out the door." A few days later Yates again approached Leroy Burton and asked if Burton had heard anything about the Union. Burton responded negatively and Yates said that if the employees called off the union drive, he would give them the same benefits as employees at Commercial Honing of Jackson.

Michael Burton, another son of Leroy Burton, testified that he was approached by Yates on November 3, 1981, and was asked where he had been on October 29, a day Mike Burton had been absent. When Burton told Yates he had been taking care fo his car, Yates said he was lying and accused Burton of going to the NLRB on that date with his father, brother, Camaj, and Brown. Mike Burton denied the accusation and the conversation ended. Two days later Vice President Yoe terminated Burton, saying it was because of attendance problems. This termination followed certain previous conversations with Yates about Burton's performance but it was precipitated when Yoe observed Burton walking around the shop rather than staying by his machine. Yoe admitted he was then aware of the union drive but testified he was unaware of any union activity by Burton at that time. Burton noted that shortly after the union cards had been passed out he had indicated to Art Oswald that he was for the Union.

Leroy Burton testified that later in November he was again approached by Yates and asked if he had learned who had started the union drive. Burton said he had not heard and Yates asked Burton to talk to other employees. On some other occasion, also during November, Yates then told Burton several times that he knew that "damn" Camaj was behind the union drive.

Also in mid-November, DiCiesare was called to the office phone by Cook. Yates was on the line and he asked DiCiesare if he would like to work overtime. DiCiesare said "sure" and Yates said that he did not need people who started the Union and did not want them working overtime. Yates then asked DiCiesare to meet with him later that evening. After DiCiesare hung up, Cook told him that if he did not attend the meeting he would not be Yates' friend anymore. Yates appeared at the shop later in the day and again advised DiCiesare to "stick with him and Art."

DiCiesare went to Yates Industries that same evening. When he arrived, he first spoke with Yoe, who asked DiCiesare what he thought about the Union. Both Bill and John Yates came in with the Respondent's attorney John Youngblood. DiCiesare testified that Youngblood asked DiCiesare what he thought about the Union and why other employees wanted union representation. DiCiesare said he was against it and Youngblood said that was nice. Youngblood then informed DicCiesare that he was the deciding vote but did not have to tell him how he was going to vote because they would be able to tell how he voted if the Union came in. Youngblood confirmed that he met with employee DiCiesare at Yates Industries. Youngblood further testified that on being introduced he advised DiCiesare that he was there on his own volition and did not have to speak to them, and that he had suggested the meeting because the Respondent had advised Youngblood that DiCiesare had received threats from his coworkers and Youngblood wished to advise DiCiesare that he did not have to endure such threats. DiCiesare testified he was never threatened and the only time this was discussed was when Yates, Youngblood, and Beck asked him about it. DiCiesare further testified that Youngblood had said to let him know and they would call the Union off.

Bill Yates also spoke to DiCiesare at this meeting and offered him a raise but Youngblood warned Yates against such action. DiCiesare testified that Yates went on to say that he would "close the shop if the Union came in." Yates offered to employ DiCiesare's brothers if things "went smooth[ly]." He said he did not need the people who supported the Union, and mentioned Leroy Burton, Harry Brown, and Bill Williams and advised DiCiesare that he intended to get rid of those employees after the union drive was finished. Around the same time, Yates also spoke with employee Williams in a conversation outside the shop. Williams testified that Yates asked him if he knew anything about the Union. Williams told Yates that he had heard some rumors. Yates mentioned that Williams had been tardy on several occasions, but then assured Williams that it did not matter. Yates then mentioned some scrap that lost money for the Company and continued his discussion of the union drive, informing Williams that it was costing the Respondent money to fight the Union, and implied that he figured that Larry Matthews, the former manager of the plant, was the one who had started the Union. He reminded Williams that he gave turkeys to employees at Thanksgiving and hams at Christmas. Yates then elaborated, telling Williams he could be spending money on Christmas gifts for employees rather than spending money on fighting the Union.

During this period of time Yates also informed Leroy Burton of his problem with the lease on the building, and had Burton go with him on one occasion to look at another building. On December 10, 1981, a week before the union election, Yates called Burton to his office and requested that Burton attempt to get the employees to abandon their organizing efforts. Yates pulled out financial records and showed Burton that he was making more money that other employees and said he would make less if the Union came in. Yates then said he would close the shop if the organizing drive was successful.

The election was held by the National Labor Relations Board on December 17, 1981. The Union made no objection to the *Excelsior* list and no ballots were challenged by the union observer, Leroy Burton. Jackie Burton and Zef Camaj voted; however, their votes were challenged by the Board agent because their names did not appear on the *Excelsior* list. The employees voted five to four to reject representation by the UAW.

The Regional Director subsequently reviewed the failure to count the ballots of Jackie Burton and Camaj noting the allegation that they had been unlawfully terminated; however, the allegations pertaining to such discharges were dismissed on December 29, 1981, and on February 9, 1982, the Regional Director recommended certifying the results and this was adopted by the Board on March 2, 1982.

On December 18, 1981, the day the following the election, the employees reported to work as usual but at the end of their shift they were called to the timeclock. Leroy Burton testified that Yates said they were "not to return to work anymore . . . as of 11 tonight the plant is closed." Burton asked if they were fired or laid off and was told "laid off." Brown recalled that Yates said, "I'm not making any money, I'm closing the shop," and in response to a question said they would get unemployment. Yates testified that he told the employees there was a lack of work and the Respondent was going to be moving, but the Respondent had to lay off everyone because it did not have a new building and they all could collect unemployment.

DiCiesare had left work early on December 18 and did not see any other employees on the weekend or otherwise learn of the closing. He came to work on Monday, December 21, and was told by Cook that the plant was closed and to go down for unemployment. He later returned to the office to see about his paycheck. He saw Yates who told him "it was a shame that everybody wanted a union and everybody now is out of a job." Yates said that "Mark Cook, Pero is out of a job . . . and was at home crying" and that all were "starting to do good. Brown was improving in his work and Bill Williams was improving and Leroy," and "now you guys are all out of a job." DiCiesare testified that Yates then told him that if he had voted against the Union he and everyone would still have a job.

The Respondent had found a new facility in Warren, Michigan, and prior to reopening in January 1982 Yates selected Cook, Moore, and Art Oswald to help with the moving of equipment. Yates testified that he did not select Burton and Brown to help move because he did not think they were physically capable. DiCiesare was not picked because Yates did not feel he was capable as he would not take orders specifically.[1]

Cook and Moore moved to the Warren facility; however, Moore (who acted as foreman) and Oswald were the only production workers employed until Grozdrovski was recalled. In July 1982, Leroy Burton was recalled and shortly thereafter he took a medical leave of absence. When he later brought in a doctor's slip saying he could work, the Respondent said it was short of work and he remained out. He testified that Cook, Beck, and Moore were there as well as Oswald, Grozdrovski, and two other workers he had never seen before. Subsequently, Brown also left work as a result of a medical problem. Brown subsequently indicated his availability to the Respondent but as of the time of the hearing the Respondent indicated it did not have the work.

IV. DISCUSSION

The issues in this case arise from the events surrounding the purchase of the Respondent by William Yates, his subsequent discharge of the former manager, his attempts to run the facility without an experienced supervisor, and his attempts beginning October 29, 1981, through discharge of employees to cure work and production problems. At the same time, several employees became concerned with their working conditions under the new ownership and contacted the Union and, subsequently, initiated the filing of a union representation petition on October 29, 1981.

The apparent union proponents made no overt show of their union interest and activities and the Respondent claims it had no knowledge of any union activities until November 3, 1981, when Copmany President Yates returned a call to the Board's Regional Office and first saw an envelope from the Board, together with an election notice. The Respondent terminated employees Zef Camaj, Jackie Burton, and Leroy Burton (Leroy's termination was later dropped) on October 29, 1981, allegedly without knowledge of any union activities and allegedly because of dissatisfaction with their attendance and production.

The testimony of witness DiCiesare, however, shows that, in a conversation shortly before the three employees were terminated on October 29, Yates told him that he was aware of who had started the union drive. Later that same evening Yates told DiCiesare and employees Beck, Oswald, and Grozdrovski that he "did not need

[1] Moore testified that he and a Jackson employee agreed to help straighten out the Roseville facility. At that time Moore did not supervise the Roseville workers but made suggestions and observations and reported his observations to Yates. He noted that Leroy Burton was a fair honer and that he could not say a whole lot against his work habits. He felt production by Williams was way down from what it should be and, although it improved, it was not enough to be considered satisfactory. He felt Brown did a fairly good day's work but had a habit of constantly complaining. He worked with DiCiesare quite a bit as he was a fairly new employee and found that "he caught ahold real good" and "started doing a lot better job." In December DiCiesare was doing "a fairly descent job" and Moore could not say anything bad about his work habits. Michael Burton was criticized for not staying by his machine and keeping it cutting. Moore considered Oswald a "good worker . . . one of the better workers . . . at Commercial Honing," although he had been one of the least experienced until Moore began working with him.

the people who started the Union," and would keep employees "who had no connection with the Union," and would give them raises if things went smoothly.

DiCiesare was subjected to extensive and repetitive cross-examination, apparently designed to confuse him and to discredit his memory, character, and credibility. DiCiesare, however, whose personal mannerisms are casual, friendly, unsophisticated, and touched by distinctive speech, showed an attempt to answer questions to the best of his ability and to be agreeable with whoever was questioning him, and he consistently held to his basic description of the events that he had participated in. Although the Respondent's witness Youngblood later attempted to disparage DiCiesare's character and testimony by implying that DiCiesare's mannerisms during their meeting suggested he had been drinking or using drugs, I find that witness Youngblood's demeanor was supercilious in nature, sometimes presumptive, and sometimes evasive where as DiCiesare's demeanor was straightforward, dispassionate, and honest. I therefore find DiCiesare's testimony should be credited over that of both Youngblood and Yates.

The Respondent's records show that on October 30, 1981, Yates' secretary signed a certified receipt of the Board's notification of the filing of the representation petition, and Yates' disclaimer that he otherwise never bothered to read material from the Board and that he did not know of the Union until November 3 strains credibility. Moreover, the disclaimer is refuted by the credible testimony of employee Brown, who was called by Yates on October 30 and asked why the employees wanted a union, and it therefore supports the inference that Yates' testimony is an attempt to cover up his actual awareness on October 29, 1981, that some employees were pursuing union activities.

This conclusion is reinforced by the unchallenged evidence that employees Oswald and Grozdrovski (as well as Cook) were also present at the evening meeting on October 29 when, as DiCiesare testified, Yates indicated his awareness of union activities, that these other employees were among those given apparent preferential rehiring by the Respondent when and after it relocated, and that they were not called as witnesses by the Respondent. Also Michael Burton testified specifically that he had talked to Oswald at the time union cards were first passed out and indicated that he was for the Union. Accordingly, I infer that one or more of these employees had promanagement sympathies and a probable awareness of the talk and activities of other employees and informed the Respondent of the other employees' developing prounion plans.

As noted above, I credit the overall testimony of witness DiCiesare and I therefore find that the Respondent, by its words and actions beginning on Octoner 29, 1981, had knowledge of employees' union activities and wanted to get rid of prounion workers. I therefore conclude that the General Counsel has met his initial burden in a case of this nature by presenting a prima facie showing sufficient to support an inference that the employees' union activities were the motivating factor in the Respondent's decision to discharge the involved employees. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), and *Castle Instant Maintenance*, 256 NLRB 130 (1981), to consider the Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

A. *The Discharges of Employees Jackie Burton and Zef Camaj*

On October 29, 1981, the Respondent laid of (with the intention that they not be recalled) employees Jackie Burton and Zef Camaj for the asserted reason that their records showed they were frequently tardy or absent and had production problems, especially producing too much scrap. Prior to that time, however, none of the employees had been warned or disciplined for problems except for the morning of that same day when President Yates warned Jackie and his father that Jackie would be fired if he did not stay by his machine. As argued by the General Counsel, however, there was an absence of any prior discipline and the only new factor arising on October 29 was the activation of a dormant union organization plan. Yates revealed his knowledge of the union activity, as well as his union animosity, when he told DiCiesare during the early afternoon that he knew who had started the Union and later said that he did not need the union people in his shop. Although Yates sought to justify his sudden termination of Burton and Camaj on the basis of their alleged poor work habits and performance, his loss of tolerance occurred only after the employees initiated the filing of the union representation petition. Although the Respondent may have partly relied on unacceptable work attitude or performance for its actions, union animus cannot lawfully be the moving cause of their dismissal. See *Marathon LeTourneau Co. v. NLRB*, 699 F.2d 248 (5th Cir. 1983), enfg. 256 NLRB 350 (1981). Accordingly, and in view of the Respondent's contemporaneous illegal practices and corroborative factors discussed below, I conclude that the preponderance of the evidence shows that the Respondent's real motivation for its discharge of Jackie Burton and Zef Camaj on October 29, 1981, was in retaliation for their suspected union organizing efforts and therefore I find they were discharged in violation of Section 8(a)(3) of the Act as alleged.

As noted, the ballots cast by Jackie Burton and Camaj during the election on December 17, 1981, were not counted. Inasmuch as they were discharged unlawfully, they should have been considered as eligible voters and their ballots counted. Inasmuch as the challenged ballots are determinative of the election outcome it is necessary that they be counted and a new certification of results of election be issued in the embraced representation case.

B. *The Discharge of Employee Michael Burton*

Michael Burton was discharged on November 5, 1981. The Respondent contends that this was because of his continued attendance problems and that, otherwise, it was precipitated on November 5 by his failure to follow the new company policy that employees should stay by their machines. Other reasons for his discharge were

proffered in an attempt to provide justification for the Respondent's action.

Although Michael had probably the worst attendance record, he was not selected for the initial "layoffs" on October 29. Moreover, he was not fired when he returned to work after again being absent on October 29. Instead, he was met with questions and accusations about having gone to the National Labor Relations Board on that date with his father, brother, and Camaj. Oswald, a management sympathizer, knew Burton has expressed prounion feelings. The Respondent had backed off on its plan to terminate Burton's father; I infer that the Respondent then substituted Michael Burton in his place, along with his brother and Camaj, as the suspected union organizers. Also, by the date Michael was discharged the Respondent had engaged in threats, interrogation, and other practices, as discussed below, and its demonstrated continuation of these practices shows the Respondent's union animosity. I find that this animosity controlled the Respondent's motivation at the time Burton was discharged. I conclude that the preponderance of the evidence shows that Michael Burton was discharged on November 5 because of his suspected union activities and those of his brother and the Respondent's union animosity which surfaced and developed as President Yates learned of the representation petition about October 29 and as he began to receive communications from the Board over the next few days. Accordingly, I find that Michael Burton was discharged in violation of Section 8(a)(3) of the Act as alleged. See *Marathon LeTourneau*, supra.

C. *Interrogation, Threats, and Other Alleged Unfair Labor Practices*

In contrast to the Respondent's vague and general denials, the several employee witnesses have given credible testimony which support the General Counsel's charges regarding numerous alleged instances of illegal practices. See generally *Fibracan Corp.*, 259 NLRB 161 (1981), and cases cited therein.

The Respondent's president Yates questioned Brown, Williams, and Leroy Burton on several occasions, asking who had started the Union and why employees had initiated the union campaign. The Respondent's attorney Youngblood questioned DiCiesare regarding the same. I find such interrogation during the time prior to a representational election to be coercive in nature, especially when viewed in the context of the Respondent's other practices, and I find that the General Counsel has established that the Respondent unlawfully interrogated employees as alleged in the complaint.

On October 29, 1981, Yates told DiCiesare that he knew who had started the union drive at the shop. Also, the Respondent's attorney told DiCiesare at the meeting in mid-November that he was the deciding vote in the union election and that they would be able to tell how he voted. These statements created and furthered the impression of surveillance and violated Section 8(a)(1) of the Act.

Employees Leroy Burton, Williams, and DiCiesare gave credible testimony that Yates offered them various benefits such as benefits similar to those of the Respondent's Jackson employees—promises of increased Christmas bonuses, giving a relative a job, increased overtime, and higher wages.

The promise of benefits during a union campaign violates the Act, unless an employer shows that the granting of benefits occurred as the result of an established company policy; however, the Respondent presented no such defense. Accordingly, I find the promises of benefits herein were attempts by the Respondent to dissuade employees from their union support and therefore in violation of Section 8(a)(1) of the Act as alleged.

Employees Leroy Burton, DiCiesare, and Brown all testified regarding numerous threats made by Yates and James Beck to close the shop. Although Beck held no formal supervisory position, he had worked for Yates Industries prior to the purchase of the honing business, he continued with the Respondent when the facility closed and moved, he sometimes assigned work and gave verbal warnings, and he had significantly different working conditions than other employees. His confidential relationship with Yates is sufficient to show that the Respondent is chargeable with responsibility for his statements.

Yates also told DiCiesare that he would not assign overtime to employees who supported the Union, and Yates told Leroy Burton that he would earn less money if the union drive succeeded. As otherwise noted above, Yates told some employees that he did not need those who started the Union and implied that those who started the Union would not work for him again and would be "out the door." He also implied a threat of loss of job by telling DiCiesare that he would still have a job if he voted against the Union. I find that these threats were made by the Respondent and, accordingly, I find that they infringed on employees' Section 7 rights and reflect further violations of Section 8(a)(1) of the Act as alleged.

D. *Failure to Recall Union Supporters*

After closing its Roseville facility the day after the election, the Respondent moved and in January began recalling certain employees at its new facility. However, known or suspected union supporters were not offered reemployment until mid-1982, when Leroy Burton and Brown were recalled for a short period of time. On the other hand, both Oswald and Grodrovski, known management supporters, were early recalls dispite their apparent lesser amounts of experience. The Respondent attempts to assert a valid business reason for its failure to offer recall to DiCiesare and Williams by suggesting that they were not capable employees; however, DiCiesare was described by Foreman Moore as a worker who was learning "real good" and doing a "fairly decent job," while Williams was one of those initially mentioned by Yates (along with Leroy Burton and Brown) as one he wanted to get rid of because of suspected union support. It appears that Yates somehow believed (apparently mistakenly) that DiCiesare had supported the Union (or he thought it desirable to separate himself from someone he had used but who had knowledge of potentially damaging practices) and I infer that he was motivated by the latter reasons to discriminatorily fail to offer him recall.

Based on the overall record, including the animus previously discussed, I conclude that the General Counsel has shown that the Respondent's selective recall of production workers to its relocated facility was discriminatorily motivated by a desire to reward employees who were not for the Union and to otherwise retaliate against union supporters and to discourage employees from supporting the Union. Accordingly, I find that the Respondent is shown to have violated Section 8(a)(3) of the Act in this regard as alleged.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union activities and those of other employees; creating the impression that the employees' union activities were under surveillance; promising benefits during a union campaign; and threatening plant closure, discharge, and loss of benefits, the Respondent violated Section 8(a)(1) of the Act.

4. By discharging Jackie Burton, Michael Burton, and Zef Camaj, the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

5. By failing to offer recall to employees Mario DiCiesare and William Williams, and by its belated recall of Leroy Burton and Harry Brown, the Respondent discriminated against them thereby discouraging employees from supporting the Union and engaged in unfair labor practices in violation of Section 8(a)(3) of the Act.

6. On December 17, 1981, Jackie Burton and Zef Camaj were eligible voters as a result of their unlawful termination, and their ballots should be counted, resulting in a new certification in Case 7-RC-16566.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act,

The Respondent having discriminatorily discharged three employees, belatedly recalled two employees, and failed to offer recall to two others, I find it necessary to order it to offer them reinstatement or recall, discharging if necessary any production employees not hired in chronological order based on their seniority when the Respondent's Roseville facility was closed, and to otherwise place their names on a preferential hiring list and offer them the first such positions that become available with compensation for loss of pay and other benefits, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 138 NLRB 716 (1962). Inasmuch as the Respondent engaged in misconduct resulting in the challenge of two ballots, which challenge is not sustained herein, it is necessary that these ballots be counted and that there be a new certification in Case 7-RC-16566. Moreover, the repetitious nature of the Respondent's misconduct demonstrates a general disregard for the fundamental rights of employees and therefore issuance of a broad order is necessary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Commercial Honing of Detroit, Ltd., Warren, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or refusing to recall any employees or otherwise discriminating against them in retaliation for engaging in suspected union activities or other protected concerted activities.

(b) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act by interrogating employees concerning their union activities and those of other employees; creating the impression that employees' union activities are under surveillance; promising benefits; and threatening plant closure, discharge, and loss of benefits to discourage membership in a labor organization or other protected concerted activities.

(c) Failing to offer recall to employees in retaliation for engaging in suspected union activities or other protected concerted activities.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action in order to effectuate the policies of the Act.

(a) Offer Jackie Burton, Michael Burton, Leroy Burton, Harry Brown, Zef Camaj, Mario DiCiesare, and William Williams immediate and full recall or reinstatement and make them whole for the losses they incurred as a result of the discrimination against them in the manner and subject to the conditions specificed in the section above entitled "Remedy."

(b) Expunge from its files any reference to the discharges of Jackie Burton and Zef Camaj on October 29, 1981, and Michael Burton on November 5, 1981, and notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Warren, Michigan facility, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's author-

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that in view of the conclusions herein a new certification of results of election be issued in Case 7-RC-16566.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."